

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**CELESTE WILLIAMS, LAUREN CRUZ,
EMANUEL O'NEALE, BRANDON
STURMAN, LATRESHA HALL,
LAKEISHA MITCHELL, CHRISTINE
BORBELY, JULIE GARIBALDI and
JANINE APONTE, on behalf of themselves
and others similarly situated,**

INDEX NO: 07cv3978-LAP

Plaintiffs,

v.

**TWENTY ONES INCORPORATED d/b/a
THE 40/40 CLUB, SHAWN CARTER p/k/a
JAY-Z, JUAN PEREZ and DESIREE
GONZALES,**

Defendants.

-----X
DECLARATION OF THERESE RAZ

I, Therese Raz, under penalty of perjury, affirm as follows:

1. I am a New York resident and an opt-in plaintiff in the above-captioned matter.
 2. I submit this declaration based on personal knowledge unless indicated otherwise.
 3. I was employed as a Bartender at The 40/40 Club sports bar located at 6 West 25th Street from approximately November 2006 through January 2007.
 4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know that it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.
 5. I never received a paycheck from The 40/40 Club during my employment.
- Therefore, I did not receive anything which reflected my hours of work, the wages I was

supposed to receive, or any withholdings for taxes. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know this was the common practice of defendants.

6. During my employment, I regularly worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club's failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium.

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a "spread of hours" premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Based on conversations with these employees, I know it was the common practice of defendants to not pay a "spread of hours" premium for workdays in excess of ten (10) hours.

8. Attached as Exhibit B are my alleged payroll reports provided by defendants and shown to me by my lawyers. I did not receive any payroll reports or pay checks during my employment at The 40/40 Club. Therefore, I never saw these documents prior to this lawsuit. Moreover, I have no reason to believe that these alleged payroll reports are an accurate reflection of my working hours at The 40/40 Club.

9. Attached as Exhibit C are my alleged W-2s provided by defendants and shown to me by my attorneys. Throughout my employment at The 40/40 Club, I never received a W-2 and have never seen these documents prior to this lawsuit. However, I did receive a 1099 form, which is attached as Exhibit D. I have no reason to believe that these alleged W-2s or this 1099 form are an accurate reflection of what I was actually paid in wages. Furthermore, based on

conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not provide W-2s to its employees.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Because The 40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts. However, based on the tips given to me by patrons and what was eventually paid to me by defendants, I believe that I did not receive all of my tips due.

11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. Defendants gave me a copy of this policy, which is attached as Exhibit E.

12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees have reported to me that they were not paid any direct wages by The 40/40 Club. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill out with his/her own money.

14. Similarly, The 40/40 Club forced employees to pay for breakages, spills, and the like. I know this was the policy at The 40/40 Club because this happened to me personally and I had to pay for it.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8 day of January, 2008.


Therese Raz

EXHIBIT A

40/40 NYC

PAGE: 1

REPORT DATE: 06/14/2007

REPORT TIME: 20:32:17.51

Payroll Report for the period from Mon Dec 11, 2006 to Sun Dec 17, 2006

REG regular OTW ovt-week OTD ovt-day MSC misc pay SAL salary ADJ adjustment DEL deleted punch * Rate changed in punch
 Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

RAZ, THERESE M.	0937	Department	Job	Tips	Pool	Type	Hours	Rate	Total
End Date: 02/18/07		FRONT OF HOUSE	BARTENDER	50.00		REG	39.1333	4.130	161.62
						OTD	10.5667	0.000	0.00
Total: 39.1333 regular hours (161.62) and 10.5667 overtime hours(0.00) and 0.0000 other hours									Total Amt 161.62

+Department	Job	Day	Date	Rate	Type	In	Out	Hrs
FRONT OF HOUSE	BARTENDER	Tue.	12/12	4.130		7:59p	3:07a	7.13
		Thu.	12/14	4.130*		4:59p	3:27a	10.47
		Fri.	12/15	4.130*		5:31p	6:45a	13.23
		Sat.	12/16	4.130*		6:53p	5:35a	10.70
		Sun.	12/17	4.130*		5:43p	1:53a	8.17

***Total wages for selected employees: 161.62

DOS itouch

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EXHIBIT B

EMPLOYEE EARNINGS RECORD

PAYROLLS BY PAYCHEX.

0020-Y156. TWENTY ONES INCORPORATED

FOR CHECKS DATED THROUGH 06/30/07 06/30/07

PER. PAY DATE		HOURS		EARNINGS		BONUS		PARTY CHK		TOTAL EARNINGS		SS MED.		FEDERAL		STATE		LOCAL		DBL		PY4011 EEPRE		2		3		4		ADJUSTMENTS		7		8		9		10																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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RAZ. THERESE

UNITED STATES
NATIONAL ARCHIVES
COLLECTION
OF
DOCUMENTS
ON
THE
HISTORY
OF
THE
UNITED STATES

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13-Jul-2007 11:43 AM PAYCHEX 7329268308

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EXHIBIT C

Jun-15-2007 04:21 AM PAYCHEX, INC.

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Form W-2 Wage and Tax Statement 2006 OMB No. 1545-0048 39-1908647 Department of the Treasury -- Internal Revenue Service

Control number 0020-Y156	Copy B--To Be Filed With Employee's FEDERAL Tax Return.	Employer identification no. (EIN) 55-0787351	1 Wages, tips, other comp. 1192.19	2 Fed. income tax withheld 218.76
Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Employee's social security no. [REDACTED]	3 Social security wages 1192.19	4 Social security tax withheld 73.26
		7 Social security tips	5 Medicare wages and tips 1192.19	6 Medicare tax withheld 17.29
		8 Allocated tips	9 Advance EIC payment	10 Dependent care benefits
Employee's name, address, and ZIP code THERESE RAZ [REDACTED]		11 Nonqualified plans 14 NYSDI 0.60	12a-12d Code See inst. for box 12	13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>
15 State Employer's state ID number NY 550787351	16 State wages, tips, etc. 1192.19	17 State income tax 64.84	18 Local wages, tips, etc. 1192.19	19 Local income tax 38.15
		20 Locality name NYC		

This information is being furnished to the Internal Revenue Service.

Form W-2 Wage and Tax Statement 2006 OMB No. 1545-0048 39-1908647 Department of the Treasury -- Internal Revenue Service

Control number 0020-Y156	Copy C--For EMPLOYEE'S RECORDS (see Notice to Employee.) This info. is being furnished to the IRS.	Employer identification no. (EIN) 55-0787351	1 Wages, tips, other comp. 1192.19	2 Fed. income tax withheld 218.76
Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Employee's social security no. [REDACTED]	3 Social security wages 1192.19	4 Social security tax withheld 73.26
		7 Social security tips	5 Medicare wages and tips 1192.19	6 Medicare tax withheld 17.29
		8 Allocated tips	9 Advance EIC payment	10 Dependent care benefits
Employee's name, address, and ZIP code THERESE RAZ [REDACTED]		11 Nonqualified plans 14 NYSDI 0.60	12a-12d Code See inst. for box 12	13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>
15 State Employer's state ID number NY 550787351	16 State wages, tips, etc. 1192.19	17 State income tax 64.84	18 Local wages, tips, etc. 1192.19	19 Local income tax 38.15
		20 Locality name NYC		

If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 2006 OMB No. 1545-0048 39-1908647 Department of the Treasury -- Internal Revenue Service

Control number 0020-Y156	Copy 2--To Be Filed With Employee's State, City, or Local Income Tax Return.	Employer identification no. (EIN) 55-0787351	1 Wages, tips, other comp. 1192.19	2 Fed. income tax withheld 218.76
Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Employee's social security no. [REDACTED]	3 Social security wages 1192.19	4 Social security tax withheld 73.26
		7 Social security tips	5 Medicare wages and tips 1192.19	6 Medicare tax withheld 17.29
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Employee's name, address, and ZIP code THERESE RAZ [REDACTED]		11 Nonqualified plans 14 NYSDI 0.60	12a-12d Code	13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>
15 State Employer's state ID number NY 550787351	16 State wages, tips, etc. 1192.19	17 State income tax 64.84	18 Local wages, tips, etc. 1192.19	19 Local income tax 38.15
		20 Locality name NYC		









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Form W-2 Wage and Tax Statement 2006 OMB No. 1545-0048 39-1908647 Department of the Treasury -- Internal Revenue Service

Control number 0020-Y156	Copy 2--To Be Filed With Employee's State, City, or Local Income Tax Return.	Employer identification no. (EIN) 55-0787351	1 Wages, tips, other comp. 1192.19	2 Fed. income tax withheld 218.76
Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Employee's social security no. [REDACTED]	3 Social security wages 1192.19	4 Social security tax withheld 73.26
		7 Social security tips	5 Medicare wages and tips 1192.19	6 Medicare tax withheld 17.29
		8 Allocated tips	9 Advance EIC payment	10 Dependent care benefits
Employee's name, address, and ZIP code THERESE RAZ [REDACTED]		11 Nonqualified plans 14 NYSDI 0.60	12a-12d Code	13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>
15 State Employer's state ID number NY 550787351	16 State wages, tips, etc. 1192.19	17 State income tax 64.84	18 Local wages, tips, etc. 1192.19	19 Local income tax 38.15
		20 Locality name NYC		

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Form 1099-MISC PAYER'S name, street address, city, state, ZIP code, and telephone no. TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK, NY 10010		OMB No. 1545-0115 2006 Miscellaneous Income 39-1908647 Department of the Treasury -- IRS		Copy B For Recipient	
PAYER'S federal identification number 55-0787351		RECIPIENT'S identification number 		RECIPIENT'S name, address, and ZIP code THERESE RAZ  	
PAYER'S federal identification number 55-0787351		RECIPIENT'S identification number 		RECIPIENT'S name, address, and ZIP code THERESE RAZ  	
Account number (see instructions)		Account number (see instructions)		Account number (see instructions)	
15a Section 409A deferrals \$		15b Section 409A income \$		16 State tax with held \$	
1 Rents \$		2 Royalties \$		3 Other income \$	
4 Fed. Inc. tax withheld \$		5 Fishing boat proceeds \$		6 Medical and health care payments \$	
7 Nonemployee compensation \$		8 Substitute payments in lieu of dividends or interest \$		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/> \$	
10 Crop insurance proceeds \$		11 		12 	
13 Excess golden parachute payments \$		14 Gross proceeds paid to an attorney \$		15 State income \$	
16 State tax with held \$		17 State/Payer's state no. \$		18 State income \$	

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EXHIBIT E

THE 40/40 CLUB POLICY AND PROCEDURE EMPLOYEE
UNDERSTANDING

NAME Therese Raz

DATE 11/29/06

POSITION Bartender

I UNDERSTAND THE FOLLOWING POLICIES,
THEY HAVE BEEN EXPLAINED, WRITTEN,
READ AND DISCUSSED AT VARIOUS
MEETING'S.

1. THERE IS A SIX STEP CREDIT CARD
PROCEDURE, IT IS POSTED AND IF NOT
FOLLOWED MAY CAUSE MY PAYMENT OF
THE FULL AMOUNT OF THE CHECK IN
QUESTION.
2. THERE IS ZERO TOLERANCE POLICY FOR
DRUG SALE OR USE BY AN EMPLOYEE OR
CUSTOMER. ALCOHOL USE BY AN
EMPLOYEE, SERVING TO MINORS OR
INTOXICATED PATRON'S. THERE ARE
PROCEDURES THAT I MUST FOLLOW IF
ANY OF THE ZERO TOLERANCE INCIDENTS
OCCUR.
3. I MUST BE FLUENT IN ALL MENU ITEMS.
4. I MUST ATTEND WEEKLY MEETINGS.
5. I MUST BE FLUENT IN THE NAME OF THE